

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for  
Approval of Indirect Transfer of Control  
of Qwest Operating Companies to  
CenturyLink

**ORDER REGARDING JOINT  
PETITIONERS' EMERGENCY MOTION  
FOR RECONSIDERATION OF NOVEMBER 12,  
2010, SCHEDULING ORDER AND REQUEST  
FOR ORAL ARGUMENT**

On November 12, 2010, the Administrative Law Judge issued an order granting the Joint CLECs' Motion for Leave to File Additional Supplemental Testimony and for Modification of the Schedule and setting a modified post-hearing schedule. On November 15, 2010, the Joint Petitioners filed an Emergency Motion for Reconsideration of the November 12, 2010 Scheduling Order and Request for Oral Argument. On November 16, 2010, the Joint CLECs and Sprint filed responses in opposition to the Motion; the Joint Petitioners filed a Reply in Support of the Motion; and the Joint CLECs filed a further response.

Based on the record and proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge issues the following:

**ORDER**

**IT IS HEREBY ORDERED** as follows:

1. The Joint Petitioners' Motion is GRANTED as to the date on which exceptions and replies to exceptions to the Administrative Law Judge's report shall be filed, but is otherwise DENIED.
2. The November 12, 2010, Order is hereby modified to specify that Exceptions to the Report of the Administrative Law Judge shall be filed on January 18, 2011, and Replies to those Exceptions shall be filed on January 25, 2011.

Date: November 17, 2010

/s/ Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

## MEMORANDUM

In their Motion, the Joint Petitioners urge the Administrative Law Judge to reconsider the November 12, 2010, Ruling and adopt a modified schedule. The Joint Petitioners reiterate many of the arguments they previously made in their initial Response in Opposition to the Joint CLECs' motion. For example, they again contend that an adjustment in the schedule under these circumstances will have the improper effect of "punishing" partial-party settlements by imposing delay and additional hearings; they argue that the Joint CLECs' decision not to highlight differences in their positions during the hearing should not be rewarded; and they maintain that the schedule adjustment will cause significant prejudice to the Joint Petitioners because they wish to close the transaction as early as possible in 2011. They further argue that the cases relied upon by the Joint CLECs in their reply brief are distinguishable from the present case and did not involve situations in which a partial-party settlement resulted in the submission of further testimony or a delay in the proceedings. Finally, they claim that the November 12 Ruling is the second time that delay and expansion of the proceedings have resulted from a significant settlement reached in this case.<sup>1</sup>

The Joint Petitioners' contention that the initial modification that was made to the schedule on October 6 was ordered "as a result of" the DOC settlement is not supported by the record in this matter. Rather, it is clear that the schedule modification ordered on October 6 was primarily motivated by the fact that the Joint Petitioners did not produce documents sought by the Intervenor in discovery until shortly before the October evidentiary hearing began. These documents were produced only after the filing of multiple motions to compel and consideration of Joint Petitioners' further motions for reconsideration, *in camera* inspection, and revision of the protective order. Discussions of the possible need for a schedule adjustment due to this delayed production began in early September (well before the DOC settlement was filed on October 4) in connection with the motions to compel filed by Sprint, Integra, and the CWA,<sup>2</sup> and an extension of the timeline was contemplated in the ALJ's September 21, 2010, Order regarding the Motions to Compel.<sup>3</sup> Possible schedule modifications to allow time for the Intervenor to review the documents produced by Joint Petitioners, file additional testimony, and hold a supplemental hearing were discussed with counsel during a telephone conference call on September 23, 2010, and the Administrative Law Judge indicated that there could be further discussions at the October evidentiary hearings, after the parties completed their review of the documents and determined whether or not

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<sup>1</sup> Motion for Reconsideration at 4 (Joint Petitioners argued that, "As a result of [the Oct. 4, 2010 DOC] settlement, the OAH ordered additional testimony, an additional hearing, and a delay in the date for an ALJ report from November 30, 2010 to December 22, 2010"). The Joint Petitioners noted in footnote 4 that "[d]iscovery issues were also a portion of the reason the Intervenor sought delay" but contended that "settlement agreement issues appeared to [be] the primary focus of additional Intervenor written testimony and hearing questions."

<sup>2</sup> See, e.g., Transcript of Oral Argument on the Motions at 81-82 (Sept. 8, 2010).

<sup>3</sup> Order Regarding Motions to Compel of Sprint, Integra, and the CWA at 2 (Sept. 21, 2010) (directing the parties to "confer and attempt to reach agreement on what, if any, adjustments are needed to the schedule . . . as a result of the required production of the additional information encompassed by this Order" and indicating that there would be further discussions if the parties were unable to reach agreement).

additional proceedings were necessary.<sup>4</sup> On October 6, at the beginning of the second day of hearing, the parties notified the Administrative Law Judge that they had been unable to reach agreement on a revised schedule. After the parties presented their respective positions, the Administrative Law Judge granted the Intervenor's proposed adjustment to the schedule to allow for the submission of supplemental testimony and an additional hearing day, noting that their proposal was granted because of "due process concerns and the fact that documents have been provided late in this proceeding."<sup>5</sup> Because the DOC Settlement had been filed on October 4, the Intervenor's request to also address the terms of that Agreement in the subsequent testimony and cross-examination was granted.<sup>6</sup>

The Joint Petitioners correctly note that the partial-party settlement reached in the Minnesota Power rate case that was relied upon in the November 12 Ruling<sup>7</sup> did not necessitate the receipt of additional information regarding the settlement after the hearing was concluded. That case was cited, however, simply for the proposition that the Commission will "scrutinize settlements with care" to ensure that the public interest is adequately protected. The Administrative Law Judge recognizes that the circumstances presented in this case are unique. Integra was a significant participant in this proceeding and one of the major proponents of the joint testimony offered in this matter. Its entry into a settlement agreement at this stage of the proceedings undoubtedly has an impact on the remaining CLECs. Because it appears that any differences in the interests of the CLECs would be relevant to the Commission's consideration of whether the terms of the Integra Settlement provide adequate protection of wholesale customers and competition, the Administrative Law Judge remains convinced that a limited adjustment to the schedule to allow supplementation of the record to address this issue is proper and in keeping with due process principles. After consideration of the remainder of the Joint Petitioners' Motion for Reconsideration and the Joint CLECs' Response in Opposition to the Motion, the Administrative Law Judge has determined that the November 12 Ruling appropriately allowed a limited

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<sup>4</sup> During the Sept. 23, 2010, conference call, counsel for Intervenor's argued that the schedule should be extended to ensure that they had an opportunity to use the information obtained in response to the Motions to Compel in a meaningful way. See Transcript of Sept. 23 Conference Call at 30-39. Counsel for CenturyLink acknowledged that if the information contained in the documents produced in response to the Motions to Compel "turn out to be the key elements in this case, then a supplemental hearing, whatever you find to be appropriate, has to be scheduled and heard." Transcript at 35. The ALJ ruled that the evidentiary hearing would go forward on October 5-7, 2010, with the understanding that the information that was being produced under the Sept. 21, 2010, Order and under any further orders might necessitate additional hearing time at a later date. The ALJ indicated that there could be discussion of this issue during the October evidentiary hearing. Transcript at 42-44.

<sup>5</sup> Hearing Transcript Vol. 2A at 19.

<sup>6</sup> Of the supplemental testimony filed by Intervenor's, only Timothy Gates' Oct. 18, 2010, Supplemental Surrebuttal Testimony (79 pages plus attachments) focused on the DOC Settlement Agreement. The remainder of the supplemental testimony filed by Intervenor's on October 22, 2010 by Mr. Gates, James Appleby, Billy Pruitt, and Bonnie Johnson (a total of 80 pages plus attachments) focused on the information contained in the HSR and other documents that had recently been produced by Joint Petitioners.

<sup>7</sup> Findings of Fact, Conclusions, and Order of the PUC in *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, No. E-015/GR-09-1151 (Nov. 2, 2010) at 19-20.

adjustment to the schedule to allow for the receipt of additional factual information regarding the Integra Settlement as it relates to the Joint CLECs' interests and the broader public interest.

The Administrative Law Judge also declines to adopt the Joint Petitioners' alternative schedule,<sup>8</sup> with the exception of the deadline for the filing of the parties' exceptions to the ALJ's Report and replies to those exceptions. The Joint Petitioners pointed out in their motion that the November 12 Ruling allowed two weeks for the preparation of exceptions. It was not the intention of the Administrative Law Judge to extend the number of days the parties would have to submit their exceptions beyond the eight days that was contemplated when the schedule in this matter was originally established. Accordingly, the date for the filing of exceptions is corrected to January 18, 2011, and the date for the filing of replies to exceptions accordingly will be January 25, 2011.

Apart from the above modification, the Administrative Law Judge is not persuaded that the schedule set in the November 12 Ruling should be modified. As noted by the Joint CLECs, the schedule is still quite compressed. The November 12 Ruling set the deadline for the filing of initial post-hearing briefs and the Joint CLECs' affidavits as November 24, 2010, in order to ensure that the Joint CLECs would have received relevant discovery responses and would file all of their affidavits relating to the Integra Settlement at that time. By setting a deadline of November 24, the Administrative Law Judge sought to avoid the filing of additional affidavits with the reply brief of the Joint CLECs. The deadline for reply briefs, proposed findings, and the Joint Petitioners' responsive affidavits was set for December 8, 2010, in order to allow adequate time for the preparation of those submissions in light of the intervening Thanksgiving holiday. It is reasonable to allow the parties until December 10, 2010, to review the submissions and notify the Administrative Law Judge if they wish to request cross examination. The approach established in the November 12 Ruling provides for the orderly presentation of evidence, provides the Joint Petitioners the opportunity to respond to all of the CLECs' affidavits at the time the reply briefs are filed, and hopefully will minimize or eliminate the need for further cross examination while still ensuring that all parties will have an opportunity to request cross examination if deemed necessary. A thirty-day timeline for the Administrative Law Judge to consider the record as a whole and render an informed decision in this matter is reasonable and necessary given the size of the record and the complexity of the issues.

The Notice and Order for Hearing in this matter contemplated that the Administrative Law Judge could, and should, adjust the target date for the Report in this matter to the extent required by "due process, full evidentiary development and due deliberation."<sup>9</sup> Several of the Commissioners also acknowledged this during their

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<sup>8</sup> Under the Joint Petitioners' proposed alternative, initial briefs and the Joint CLECs' affidavits would be filed on November 19; reply briefs, proposed findings, and the Joint Petitioners' responsive affidavits would be filed on November 29; the parties would be required to notify the Administrative Law Judge of the need for cross examination on December 1; the expected date for issuance of the Report of the Administrative Law Judge would remain December 22; exceptions to the ALJ's report would be filed on December 30; and replies to exceptions would be filed January 6.

<sup>9</sup> Notice of and Order for Hearing at 5.

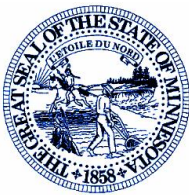
discussion of this matter on June 10, 2010.<sup>10</sup> Under the circumstances, it has become necessary to grant a limited extension to the schedule to ensure due process, full evidentiary development, and due deliberation, in keeping with the directives of the Notice and Order for Hearing. The anticipated 19-day extension of time in the date on which the matter will be before the Commission is modest and will not cause undue prejudice to the Joint Petitioners.

For all of these reasons, the Joint Petitioners' Motion for Reconsideration has been denied, with the exception of the adjustment in the dates for filing exceptions and replies to exceptions.

**B. L. N.**

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<sup>10</sup> For example, Commissioner Boyd recognized during the meeting that if a target date is set and "it becomes obvious the target date can't be met, the ALJ will simply shift the timing."<sup>10</sup> In addition, Commissioner Reha noted that "once the case is turned over to the ALJ, we can't dictate the schedule" and Commissioner O'Brien agreed in response that "[t]hese are only suggestions."<sup>10</sup>



# MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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November 17, 2010

To All Parties as Listed on the E-Docket Service List	
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Re: *In the Matter of the Joint Petition for Approval of Indirect Transfer  
of Control of Qwest Operating Companies to CenturyLink*  
OAH Docket No. 11-2500-21391-2;  
PUC Docket No. P-421, et al/PA-10-456

Dear Parties:

Enclosed and served upon you as indicated on the E-Docket Service List please find the Administrative Law Judge's Order Regarding Joint Petitioners' Emergency Motion for Reconsideration of November 12, 2010, Scheduling Order and Request for Oral Argument in the above matter.

Sincerely,  
s/Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge  
Telephone: (651) 361-7845

Enclosure

# CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink</i>	OAH Docket No. 11-2500-21391-2 PUC Docket No. P-421, et al/PA-10-456
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Nancy J. Hansen certifies that on the 17th day of November, 2010, she served a true and correct copy of the attached Order Regarding Joint Petitioners' Emergency Motion for Reconsideration of November 12, 2010, Scheduling Order and Request for Oral Argument, by serving as indicated on the attached E-docket Service List.

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